statements, and the proof of that amount of decline is extremely difficult as a nature of damage caused by those reasons, it is rational to comprehend that the court may determine the amount of reduction of damages as defined in art. 19 para. 2 of FIEA, based on all oral arguments and the result of the examination of evidence, through the application by analogy of art. 248 of the Code of Civil Procedure.

The fact that art. 19 of FIEA lacks a rule like art. 21-2 para. 6 of FIEA does not affect the interpretation stated above.

Editorial Note:

Some scholars argue that the goal of compensation for primary market investors who suffered losses by false statements is to realize restitution and regard the Reduction as an improper system[8], and hence the application of art. 248 of Civil Procedure Code is also inappropriate from this point of view[9].

Others claim that the Reduction is appropriate in consideration of the equity among the parties and permit the application of art. 248 of Civil Procedure Code on the ground of difficulty of the providing proof[10]. From this perspective, some support the Supreme Court's judgment in this case, arguing that the interpretation of legislative intent of this liability system as restitution is insufficient to deny the Reduction[11].

6. Labor/Social Security Law

X v. Hamakyorex
Supreme Court 2nd P.B., June 1, 2018
Case No. (*jyu*) 2099 of 2016
72 (2) MINSHU 88

[8] *E.g.*, ETSURO KURONUMA, THE FINANCIAL INSTRUMENTS AND EXCHANGE ACT 211 (Yuhikaku, 2016).
[9] Kuronuma, *supra* note 7, at 8.
[10] Fujibayashi, *supra* note 6, at 7.
[11] Monguchi, *supra* note 1, at 60; Kawanaka, *supra* note 1, at 153.

Summary:

A case in which the legality of differences of working conditions, based on the article 20 of Labor Contract Law, was contested between employees under a fixed-term contract and those under an indefinite contract, although the contents of the duties of both employees were same, where the Supreme Court judged the difference of the payment of the allowances for a perfect attendance to be unreasonable, but, on the other hand, the difference of the payment of the allowances for housing not to be unreasonable.

Reference:

Article 20 of the Labor Contract Act

Facts:

1. X is a truck driver employed under a fixed-term contract by Y, an automobile cargo transportation company.

2. There are two categories of drivers in Y: (a) so-called "regular employees" under indefinite contract and (b) employees under fixed-term contract. There are no differences in the contents of work or responsibilities between them. However, concerning the working conditions, different work rules exist and apply to them. It follows that there is a possibility of a nationwide job transfer for employees under indefinite contract; on the other hand, there is no job transfer for employees under a fixed-term contract. Moreover, allowances for (i) no accident, (ii) special work, (iii) food, (iv) housing, (v) perfect attendance, (vi) family, are only paid to employees under indefinite contract and (vii) the amount of a commuting allowance was different until a certain time.

3. X brought an action, principally, for a contractual status that X had the same rights as regular employees and for a payment of the unpaid allowances on the ground of a violation of the Art. 20 of the LCA, or, preliminarily, for a payment of the amount equivalent to the above-mentioned unpaid allowances as a compensation for damage on the ground of a tort.

4. The decision of the first instance (the decision of Otsu District Court, September 16, 2015, 1135 Rodo Hanrei 59) admitted the claim on a payment of the compensation for damage only for the above-mentioned (vii). The decision of the second instance (the decision of Osaka High Court, July 26, 2016, 1143 Rodo Hanrei 5) admitted the claim on a payment of the compensation for damage for the above-mentioned (i), (ii), (iii) and (vii). Y made a final appeal to the Supreme Court and X made an incidental final appeal too.

Opinion: *The court dismissed the final appeal, admitted partially the incidental final appeal, quashed and remanded the case.*

1. The art. 20 of the LCA stipulates that, on the assumption that there could be a difference in working conditions between fixed-term contract and indefinite contract, the difference cannot be found unreasonable in consideration of the content of the duties, the extent of the changes in the content of duties and work location, and other circumstances, and then requires a balanced treatment in accordance with the difference of the content of work and so on.

2. It is construed that the art. 20 of the LCA has legal force, and that the part of the fixed-term contract which violates the same article is invalid. However, the said article does not stipulate literally that the working conditions of the fixed-term contract become the same as those of the indefinite contract in the case of a violation. Then, it is construed that the working conditions of the fixed-term contract do not become the same as those of the indefinite contract by the effect of the said article. Also, in this case, where working rules for regular employees and employees under fixed-term contracts are set separately, it is difficult to interpret reasonably that working rules for regular workers are applied to X in the case of a violation. Thus, there is no reason for claims based on the contractual status.

3. "Due to the existence of a fixed-term" written in the art. 20 of the LCA means that differences of working conditions occurred in connection with the existence of a fixed-term. In this case, where the differences of working conditions occurred because different working rules had been

applied, we can say that the said differences occurred in connection with the existence of a fixed-term contract, and that this case corresponds the case where differences are due to the existence of a fixed-term. In light of article 20 of the LCA, which stipulates "not to be found unreasonable", it is construed that the said article questions if it is possible to judge the difference of working conditions unreasonable or not. Thus, "(being) found unreasonable" written in the art. 20 of the LCA means that it is possible to judge the differences of working conditions between employees under fixed-term contracts and those under indefinite contracts unreasonable. As the judgment of unreasonableness accompanies a normative estimation, the burden of proof is respectively borne to the party who claims the violation of the said article concerning the facts which form the base for the estimation of the said differences being found unreasonable; on the other hand, to the party who contests the violation of the said article concerning the facts which prevent the estimation of the said differences being found unreasonable.

4. In this case, the above-mentioned (iv) is paid under the purpose of subsidies for costs needed for the housing of employees. In contrast with fixed-term employees, who are not to be transferred with a move of their residence, regular employees are to be transferred with a move of their residence. This is why cost for housing of the latter would become more expensive than that of fixed-term employees. Therefore, this difference cannot be estimated to be unreasonable.

In this case, the above-mentioned (v) is paid under the purpose of an incentive for perfect attendance from the necessity to ensure the number of attendants. The said necessity does not occur because of the difference between them through the contents of the duties or the circumstances such as the possibilities of transfer of job or promotion in the future. Furthermore, employees under a fixed-term sontract, in principal, do not have their salary raised, and there is no circumstance that shows a raise being carried out in consideration of the fact of perfect attendance. Thus, this difference can be estimated unreasonable.

Editorial Note:

This case is concerned with the legality of the differences of working

conditions, especially about the payment of allowances, between employees under a fixed-term contract and those under indefinite contract, although the contents of the duties of both groups of employees are the same.

In general, there are two employment categories in Japan: (a) a so-called "regular" worker, whose contract is indefinite and full-time, who is hired on the assumption of long-term employment and to be a core person of the company, and therefore, he/she is subject to personnel changes such as jobs, work locations, promotions and trainings, and (b) so called "non-regular" workers whose contract is part-time or fixed-term, who is hired and engaged for a routine or support work, and therefore, he/she is not subject to personnel changes. Their working conditions, such as composition and level of the base salary and bonus, payment of several allowances, and promotion, are often stipulated differently. This is why disparities between the two categories would occur even though the contents of duties are the same at a certain point.

By the way, the principal called "Equal work, Equal pay" is not expressly stipulated in the Japanese substantive law. Against such circumstances, legislators provided a prohibition of the unreasonable differences in working conditions due to the existence of a term of contract in the art. 20 of LCA in 2012. Concerning part-time workers, a balanced treatment between a part-time worker and a full-time worker and a prohibition of discriminatory treatment against part-time workers are stipulated in the art. 8 and 9 of Part-time Workers Act.

This is the first judgment of the Supreme Court about the art. 20 of LCA. This judgement revealed the way to interpret art. 20 of LCA as follow.

Firstly, this judgement stated the aim of the article, which requires a balanced treatment depending on the difference of contents of duties and so on. It means that this article does not require strictly the same treatment of employees.

Secondly, this judgment revealed the effect and the way of a legal remedy in the case of a violation of the Art. 20 of LCA. This judgment stated that this article has legal binding force and, therefore, in the case of a violation of the article, the part of the employment contract judged illegal becomes invalid. However, that part is not instantly governed by the part of

the working conditions of the employees under non-fixed term contract. As a reason for that, this judgment pointed out that the supplementary effect as is written in the art. 13 of the Labor Standard Act, is not written in the art. 20 of LCA. As a result, victims of the violation of this article are granted the right to claim compensation for damages based on tort as a legal remedy.

Thirdly, concerning the expression of the art. 20 of LCA "due to the existence of a fixed-term", this judgement considered it enough for differences to exist related to the existence of a contract term or not. In other words, it is not required that there exists an evident causal relationship.

Fourthly, concerning the expression of the art. 20 of LCA "it is not to be found unreasonable", this judgement considered that the meaning of the said text does not require the reasonableness of the difference but the unreasonableness; therefore, the issue in a court is exactly whether there is an unreasonableness of difference or not. This solution is related to the norm of a burden of proof (*see* opinion 3).

Fifthly, concerning the judgment of the unreasonableness, this judgment revealed that collective bargaining and managemental decisions of employers are taken into account to estimate the unreasonableness of the difference as an element of "the other circumstances" written in the art. 20 of LCA. On the other hand, this judgment did not show what degree of a difference will be considered as unreasonable.

As for a concrete judgement of the unreasonableness in a difference of working conditions, this judgment denied an unreasonableness of the difference of a payment of the allowance for housing on the ground of the eventual housing cost due to the possibility of the transference to all branches in Japan. On the other hand, as for the difference of a payment of the allowance for perfect attendance, it was judged unreasonable on the basis of the purpose of the said allowance.

As a supplementary information, there was another judgment of the Supreme Court on the same day, *Nagasawa Un-yu* case (Supreme Court, June 1, 2018, 72 (2) Minshu 202), where the legality of the differences of a base salary, a payment of several allowances and a bonus between the "regular" employees and those rehired after retirement age under a fixed-term contract was contested. The Court judged that most of the

differences were not unreasonable except some allowances.

In addition, the art. 20 of LCA was to be deleted and the content of the article was integrated into the art. 8 of the new Part-time Workers and Fixed-term Workers Act by the reform adopted in 2018 (effective on April 1st, 2020). This judgment will be referred to under the new act as a judicial precedent.

7. International Law and Organizations

Claim for revocation of administrative disposition regarding non-recognition of refugee status

Tokyo District Court, July 5, 2018,
Case no. (*gyo u*) 524 of 2015

Summary:

The case deals with the refugee status recognition of a Sri Lankan man (the "Plaintiff"). Prior to this case, the Plaintiff applied to the Minister of Justice (the "MOJ") for formal refugee status recognition, which was rejected by the MOJ through an administrative disposition. Following such rejection, the Plaintiff filed an action requesting the revocation of the administrative disposition to the Osaka District Court. Then the Osaka District Court rendered its judgment where it revoked the MOJ's administrative disposition as it recognized the Plaintiff's refugee status, due to his relationship with the Liberation Tigers of Tamil Eelam (the "LTTE"). However, despite such recognition, the MOJ issued another administrative disposition not recognizing the Plaintiff's status because it views the situation in Sri Lanka as having improved since May 2009. The Plaintiff formally objected, but the MOJ denied it. Consequently, the Plaintiff filed another action to the Tokyo District Court (the "Court") to request for revocation of the second administrative disposition, among others.

In rendering its judgment, the Court reasoned as follows. Since the Plaintiff's refugee status had been recognized by the Osaka District Court, the question then becomes whether at the time when the second